Pocono Medical Center *and* Pennsylvania Nurses Association, Petitioner. Case 4–RC–17653

October 10, 1991

ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The Board has carefully considered the Employer's request for review of the Regional Director's Decision and Direction of Election which included the discharge planner and the quality review nurses in a voting group to decide whether they wish to be included in the existing bargaining unit of registered nurses.

Chairman Stephens and Members Devaney and Raudabaugh deny the Employer's request for review of the inclusion of the discharge planner as it raised no substantial issues warranting review for the reasons set forth in the Regional Director's Decision and Direction of Election (pertinent portions of which are attached as an appendix). Member Oviatt, dissenting, would grant review and reverse the Regional Director's decision.

With respect to the inclusion of the quality review nurses, the Employer's request for review of the Regional Director's Decision and Direction of Election is denied by an equally divided Board. Chairman Stephens and Member Devaney would deny the Employer's request for review; Members Oviatt and Raudabaugh would grant review and reverse. Accordingly, since the Board Members are evenly divided on this issue, there is a lack of majority to grant review. *Durant v. Essex Co.*, 7 Wall. 107, 19 L.Ed. 154 (1869).

APPENDIX

The Employer, a Pennsylvania corporation, is engaged in the operation of an acute care hospital in Stroudsburg, Pennsylvania. The Employer and the Petitioner are parties to a collective bargaining agreement covering a unit of full-time and regular part-time registered nurses. The Petitioner seeks to add the following positions to the registered nurse unit: outpatient chemotherapy registered nurses, clinical oncology/enterostomal therapy practitioner, clinical oncology registered nurses, cardiac rehabilitation registered nurses, discharge planner, and quality review nurses. The parties stipulated to the proposed additions to the unit except that the Employer, contrary to the Petitioner, would exclude the discharge planner and the quality review nurses on the ground that they do not share a community of interest with the registered nurses.

There is only one discharge planner who is in the Hospital's patient and family service department. The duties of this position consist of screening medical documentation and charts for admitted patients, assessing the need for each patient's discharge plan, and establishing plans where appropriate for post-discharge treatment, and requires no formal training. The discharge planner is required to be a registered nurse with medical/surgical and community relations experience.

In preparing discharge plans, the discharge planner meets with patients, and occasionally their families, observes patients in their physical therapy sessions, assesses the patients' diagnoses and physical condition and determines if they are able to be mobile and independent upon their return home. The discharge planner performs no examination but relies heavily on the staff nurses' notes and admission assessments. She has discussions concerning patients with the medical and nursing staffs in weekly discharge conferences, which occur in all but the special care units of the Hospital. In these conferences, the discharge planner and the staff nurses establish priorities for implementing the patient's discharge plan. The discharge planner also has contact with staff registered nurses because the nurses fill out discharge planning sheets. The remainder of her time is spent in patient care units, and in a weekly patient review meeting with the department head, case workers, and agency nurses and coordinators. The Director of Patient and Family Services supervises the discharge planner, two case workers, a staff assistant, and a secretary/receptionist.

If the patient can return home the discharge planner identifies the needed in-home resources and services, contacts community agencies for on-going care, speaks to the patient's physician to get appropriate orders, familiarizes the patient and the family with the resource provider and places the order for equipment prescribed by the doctor. If the patient cannot return home, the discharge planner contacts nursing homes or short-term rehabilitation facilities and refers the patient to those facilities and to the Hospital's patient and family services case workers.

Whereas staff registered nurses work shifts around-the-clock and every day of the week, the discharge planner works Monday though Friday, 7:30 AM to 4:00 PM, and has some latitude in varying her hours. She is on-call one week each month and carries a beeper. When she is absent, a case worker or her supervisor, not staff registered nurses, perform some of her functions. The discharge planner does not wear a uniform, and never fills in for staff registered nurses. Her hourly pay rate is $15.31. The staff registered nurses' pay range is from $14.14 to $17.88 per hour. The discharge planner and the quality review nurses can ''bank'' approximately the same number of sick days as the staff registered nurses. However, the discharge planner and the quality review nurses can accrue more vacation time than the staff registered nurses.

As shown by the record evidence discussed above, the discharge planner is a registered nurse who has frequent contact with the staff registered nurses. The discharge planner consults with the staff registered nurses in preparing the patient's discharge plan. Their wage rates and benefits are comparable. The discharge planner has substantial face-to-face contact with patients and spends most of her time in patient care units. Based on the foregoing, I find that the discharge planner shares a sufficient community of interest with the staff registered nurses. Accordingly, I shall include the discharge planner in the voting group. *Newton-Wellesley Hospital*, 219 NLRB 699, 702, 704 (1975).

There are three full-time, three regular part-time, and two volunteer contingent quality review nurses who are responsible for utilization reviews, quality reviews, and risk man-

agement. The volunteers are not sought by the Petitioner. These individuals are registered nurses who are required to hold a current license in Pennsylvania but they do not practice as registered nurses. The utilization reviews are used to determine if the patient's admission was medically necessary, whether the doctor unduly prolonged the hospitalization, whether the patient's diagnosis or condition has changed, and whether the patient should be receiving treatment elsewhere. The quality review nurse evaluates the patient's medical records and charts, gathers data, and provides information to third party payors to justify the bill and to minimize the patient's stay. Staff registered nurses are consulted as part of this process, though they themselves do not perform utilization review functions.

The quality reviews insure that the patient receives the Hospital's best quality care and that changes in the patient's condition are addressed by the patient's physician. Each department in the Hospital, including the nursing department, does its own quality review studies. The quality review nurses also conduct studies and collect data concerning medications or blood products administered in the Hospital. With respect to risk management, quality review nurses are specifically charged with identifying unsafe practices that could expose the Hospital to liability. Risk management is also part of the staff registered nurses' general responsibilities. Quality review nurses' direct patient contact is limited to monitoring whether patients receive appropriate skill levels of care and, if so, whether they reach their optimal level. They notiify Medicare patients of termination of their benefits and speak with patients concerning their insurance coverage. Most of their functions consist of administrative work, and end with the patient's discharge.

The quality review office is on the fourth floor of the Hospital. However, the quality review nurses cover all Hospital units and spend 5-1/2 to 6 hours of their 8-hour day in the nursing units where the medical records are kept. The rest of their day is spent attending to paperwork which they complete before visiting the nursing units. The Director of Quality Review Department reports to the Medical Director of the Hospital. The quality review nurses work 8:00 AM to 4:00 PM. The quality review nurses do not wear uniforms and do not substitute for the staff registered nurses. They are paid approximately $15.00 to $16.19. Their benefits and the discharge planner's benefits are similar.

The record discloses that quality review nurses are registered nurses who have regular but somewhat limited contact with staff registered nurses and patients. Although they do not provide patient care, they spend most of their time in the nursing unit and consult with the nurses during utilization reviews. Quality review nurses, as well as staff nurses, perform quality review studies. Their wages and benefits are comparable. Based on the foregoing, I find that the qulality review nurses share a sufficient community of interest with the staff nurses to warrant their inclusion in the existing bargaining unit. *The Trustees of Noble Hospital*, 218 NLRB 1441, 1444–45 (1975); *Long Island College Hospital*, 256 NLRB 202 (1981); Cf. *Ralph K. Davies Medical Center*, 256 NLRB 1113, 1117 (1981); *Addison-Gilbert Hospital*, 253 NLRB 1010, 1012 (1981).

If a majority of the valid ballots are cast for the Petitioner, they will be taken to have indicated their desire to be included in the existing bargaining unit currently represented by the Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.